

APPEAL NO. 012278
FILED NOVEMBER 12, 2001

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). Following a contested case hearing held on September 4, 2001, the hearing officer resolved the disputed issues by determining that the respondent (claimant) sustained a compensable injury on _____, and that he has had disability from April 27, 2001, through the date of the hearing. The appellant (carrier) challenges these determinations on sufficiency of the evidence grounds. The file does not contain a response from the claimant.

DECISION

Affirmed.

The claimant testified that while working as a skycap at an airport on _____, he became stuck in an elevator with some passengers' luggage and called for assistance; that an airline maintenance employee who responded to the call pried open the elevator door a few inches and then, without provocation, pulled and twisted on the claimant's right arm, cursed at him using obscenities, and left the scene. The claimant further stated that he had never seen the maintenance employee before and had no relationship with him whatsoever, and that some time later the individual apologized. He also said he sought medical treatment for his arm and shoulder on the day he was injured; that he continued to work until April 27, 2001, when his treating doctor took him off work; and that he has not yet been able to return to work. The claimant's current treating doctor reported on May 7, 2001, that the claimant was to begin a six-week work hardening program to ready him for return to work in some capacity. The carrier contended that it was not liable on the basis of the personal animosity exception to liability. Section 406.032(1)(c).

The claimant had the burden to prove that he sustained the claimed injury and that he had disability as that term is defined in Section 401.011(16). Texas Workers' Compensation Commission Appeal No. 94248, decided April 12, 1994. The burden of proof on the personal animosity exception to liability is discussed in Texas Workers' Compensation Commission Appeal No. 948450, decided August 11, 1994. The Appeals Panel has stated that in workers' compensation cases, the disputed issues of injury and disability can, generally, be established by the lay testimony of the claimant alone. Texas Workers' Compensation Commission Appeal No. 91124, decided February 12, 1992. However, the testimony of a claimant, as an interested party, only raises issues of fact for the hearing officer to resolve and is not binding on the hearing officer. Texas Employers Insurance Association v. Burrell, 564 S.W.2d 133 (Tex. Civ. App.-Beaumont 1978, writ ref'd n.r.e.). The hearing officer is the sole judge of the weight and credibility of the evidence (Section 410.165(a)), resolves the conflicts and inconsistencies in the evidence (Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ)), and determines

what facts have been established from the conflicting evidence. St. Paul Fire & Marine Insurance Company v. Escalera, 385 S.W.2d 477 (Tex. Civ. App.-San Antonio 1964, writ ref'd n.r.e.)). As an appellate reviewing tribunal, the Appeals Panel will not disturb the challenged factual findings of a hearing officer unless they are so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust and we do not find them so in this case. In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951).

The decision and order of the hearing officer are affirmed.

The true corporate name of the insurance carrier is **VIRGINIA SURETY COMPANY** and the name and address of its registered agent for service of process is

**CORPORATION SERVICES COMPANY
800 BRAZOS
AUSTIN, TEXAS 78701.**

Philip F. O'Neill
Appeals Judge

CONCUR:

Gary L. Kilgore
Appeals Judge

Robert W. Potts
Appeals Judge